

BOARD OF APPEALS
For
MONTGOMERY COUNTY

Stella B. Warner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. S-610-B

PETITION OF McDONALD'S CORPORATION

OPINION OF THE BOARD

(Hearing held September 12, 2001)
(Effective Date of Opinion: December 14, 2001)

This proceeding is a petition pursuant to Section 59-G-2.16 of the Montgomery County Zoning Ordinance (Chapter 59, Mont. Co. Code 1994, as amended) (Drive-In Restaurants). The Petitioner proposes the demolition and reconstruction of an existing drive-in restaurant with a drive-through window and the extension of the hours of operation to 5:30 a.m. to midnight, Sunday through Thursday and 5:30 a.m. to 1:00 a.m., Friday and Saturday.

Patricia A. Harris, Esquire and Erica A. Leatham, Esquire represented McDonald's Corporation. Testifying in support of the special exception site plan were William Hunter, Michael Powell and Isaac Green of McDonald's Corporation and Stephen Mordfin of Ben Dyer Associates, planner. Also present at the hearing and testifying in opposition was Mr. Arthur Archuleta, an adjoining property owner.

The subject property is Part of Lots 10, 11 and 12, Block 13, Paint Branch Farms subdivision, located at 504 E. Randolph Road, in the C-1 Zone.

Decision of the Board: Special Exception **Granted**, subject to the conditions enumerated below.

PETITIONER'S CASE

The Applicant, McDonald's Corporation, has owned and operated a Drive-in Restaurant at this site since 1968. Special Exception S-610 was approved in 1978, permitting the continued operation of the restaurant and including a drive-through window. The Special Exception has been modified several times, including S-610A and minor modifications in 1984 and 1989 (Resolution dated July 26, 1984, addition of a cashier's booth; Resolution dated June 15, 1989,

elimination of original condition of approval requiring security patrols). The Applicant requests permission to demolish the existing 30-year old restaurant and replace it with a modern McDonald's prototype restaurant to facilitate its use of the site and to better accommodate its customers without adversely impacting neighboring uses.

The property is located along the northern side of E. Randolph Road, approximately 140 feet east of the intersection of E. Randolph Road and New Hampshire Avenue. Access is provided along E. Randolph Road and from New Hampshire Avenue via the "panhandle" shape of the property. See Exhibits 4(b) and 11, Boundary Survey and Vicinity Map.

The surrounding land uses include a mix of residential and commercial uses reflecting the property's location near the edge of the Colesville Commercial Center. The Colesville Shopping Center and the rear of a residential lot zoned RE-1 abut the north property line, a two story retail use with a convenience store is located to the west, an office building is under construction to the east and across Randolph Road is a gas station and telephone switching station. All the commercial land uses lie within the C-1 Zone. See Exhibit 11, Zoning and Vicinity Map.

The Applicant proposes to demolish the existing one-story with basement, 5,013 square foot structure, and construct a new building with a drive-through window. The existing building is obsolete and no longer meets the company's operational requirements. The new building will have a footprint of 4,115 square feet, with 2,139 square feet devoted to patron area. As part of this proposal, the Applicant intends to remove the "PlayLand" to improve pedestrian and vehicular access through the site. The new building and drive-through lane will be located in approximately the same position as the existing building and drive-through lane.

The new restaurant will have a mansard roof and other architectural features as shown on Exhibit 5, Elevations.

A total of 61 parking spaces were originally proposed per Exhibit 4(d), the original special exception site plan. The special exception site plan, as amended at the hearing provides 59 parking spaces. This is a reduction of ten parking spaces from the existing parking layout. A minimum of 54 parking spaces are required.

An enclosed trash corral will be located along the commercially zoned area of the site as shown on Exhibits 4(d), 20 and 23, special exception site plan. The trash corral will be completely enclosed. Other trash receptacles will be located throughout the parking area.

Additional landscaping is proposed along the northern property line bordering the residential zone. The Applicant proposed increasing the existing northern buffer area, which ranges in width from 2 feet to 7 feet, to a ten foot wide landscaped buffer area and replacing the existing six foot tall fence with an eight foot tall board-on-board fence to shield the residential lot from the parking area. Additional landscaping and green areas throughout the site are proposed to nearly double the existing green area. See Exhibit 24.

The easternmost of the three existing curb cuts along E. Randolph Road will be eliminated to improve pedestrian safety and vehicular circulation on the property and along E. Randolph Road. See Exhibits 4(d), 20 and 23, special exception site plan.

A traffic study is not required to satisfy Local Area Transportation Review to determine the adequacy of public facilities because the proposed restaurant will generate the same or fewer peak hour trips than the existing restaurant. See M-NCPPC Staff Recommendation, Exhibit 16.

Stormwater management will be in underground pipes and will be handled completely on site. Currently, stormwater management is not provided.

Hours of operation are proposed to be from 5:30 a.m. to midnight, Sunday through Thursday and 5:30 a.m. to 1:00 a.m., Friday and Saturday. This represents an increase in the existing hours by one-half hour every morning and one hour in the evening, Sunday through Thursday. Hours are determined by customer demand and based on a company standard.

The Applicant met with the Greater Colesville Citizen's Association before and after filing for the proposed modification and revised several design elements in response to community concerns. A letter of support from the civic association was introduced to the record as Exhibit 18.

Mr. Stephen Mordfin testified as an expert in planning that the proposed modification conforms to all zoning regulations, with the exception of the parking setback. Mr. Mordfin testified that it is the Applicant's intention to request a waiver from the Planning Board at the time of Site Plan review to provide a ten-foot parking setback along the northern boundary rather than the required 35 feet. Mr. Mordfin also testified that the special exception site plan meets all the requirements for the Special Exception as enumerated in Sections 59-G-1.21 and 59-G-2.16 of the Montgomery County Zoning Ordinance.

Mr. William Hunter, Real Estate Representative of McDonald's, testified that the existing building is obsolete and the proposed modification is the most efficient way to bring the facility in line with modern standards. Mr. Hunter also testified that the demographics of the area do not support the maintenance of the "PlayLand," necessitating its removal. Mr. Isaac Green testified that as the operations manager of the site, he receives and responds to any complaints

about the operation of the restaurant. Mr. Green also testified that standard operating procedure at the site involves picking up trash within a one block radius twice a day and within the parking lot every one-half hour. Mr. Green and Mr. Michael Powell, Project Manager, testified that deliveries normally occur once a week, at approximately 11:00 p.m. and last approximately two hours. Mr. Powell also testified as to the amount of lighting to be provided on the property according to the photometric plan, Exhibit 21. He testified that the plan was a worst case scenario because it was based on output from 24-foot lightpoles; 20-foot poles will be used at the site, which will reduce the foot-candles. In addition, Mr. Powell testified that the use of directed shields along the northern property line would prevent excess light spill-over onto the neighboring residential property.

ADDITIONAL TESTIMONY

Mr. Arthur Archuleta, the owner of the adjoining residential lot (Lot 3, Block 13), appeared at the hearing to testify in opposition to the proposed Special Exception modification. Mr. Archuleta testified as to his concerns regarding site circulation, the timing of deliveries, landscaping in the buffer area, lighting along the shared property line and the need for the eight-foot fence to preclude truck occupants from dumping trash into his rear yard from the parking lot.

The Applicant agreed to address these concerns by (1) restricting deliveries to between the hours of 7:00 a.m. to 9:00 p.m. and/or one delivery per week in the evenings to be concluded by midnight; (2) adjusting and shielding lights to provide adequate security without causing excessive light spillover onto Mr. Archuleta's property; and (3) eliminating two parking spaces in the northeastern corner of the site and increasing the landscaped buffer in the northeastern corner. This revision will accommodate a thirty-foot turning radius along the eastern drive aisle to provide sufficient separation between the site and the rear of the residential lot. In addition, the Applicant agreed to post "No Parking" signs to the west of the curve and add five-foot bollards at five foot intervals along the landscaped curve. The addition of the landscaped area, signs and bollards in place of two parking spaces, in conjunction with the eight foot tall fence, acts to eliminate the opportunity for truck occupants to toss trash into Mr. Archuleta's yard.

FINDINGS OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Both the Planning Board and its Technical Staff recommended approval of the proposed modification, S-610B, with conditions. See Exhibit 16.

FINDINGS OF THE BOARD

Based on the binding testimony and the exhibits of record, the Board finds that the proposed Special Exception can be granted.

Sec. 59-G-1.2. Conditions for granting.

59-G-1.2.1. Standard for evaluation. A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.

Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

The inherent and non-inherent effects of the proposed modification have been established by the existence of the previously approved special exception. Furthermore, this use has operated at the existing site for more than 20 years and the proposed modification will result in a drive-in restaurant that is similar in scale and operation to the existing use.

59-G-1.21. General conditions.

- (a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

- (1) Is a permissible special exception in the zone.

The Board finds that the proposed special exception modification for a drive-through restaurant is permissible in the C-1 zone.

- (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

The Board finds that the proposed modification complies with the standards and requirements for a drive-in restaurant found in Section 59-G-2.16.

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan thereof adopted by the Commission. Any decision to grant or deny special exception must be consistent with an recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that the granting of a particular special exception at a particular location would be inconsistent with the land use

objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

The Board finds that the proposed modification is consistent with the White Oak Master Plan.

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.

The Board finds that the design and scale of the proposed modification will be in harmony to the general neighborhood.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds that the proposed modification will not have a detrimental effect on the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood.

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds that the proposed use will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity in accordance with Section 59-G-1.21(a)(6) of the Zoning Ordinance.

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

The Board finds that the proposed use will not, when

evaluated in conjunction with existing and approved special exceptions in the neighboring one-family residential area, increase the number, intensity or scope of special exception uses sufficiently to affect the area adversely or alter its predominantly residential nature, in accordance with Section 59-G-1.2 1 (a)(7) of the Zoning Ordinance.

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds that the proposed use will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area, in accordance with Section 59-G-1.27(a)(8) of the Zoning Ordinance.

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

The Board finds that the proposed use will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities, in accordance with Section 59-G- 1.21(a)(9) of the Zoning Ordinance. The Board finds that the sewer and water capacity for the proposed modification is sufficient and finds that the elderly care facility will be adequately served by existing public utilities.

- (i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.

The Board finds that approval of a preliminary plan of subdivision is not required in this case.

- (ii) With regard to findings related to public roads, the Board . . . must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

The Board finds that the proposal will not have a detrimental effect on the safety of vehicular or pedestrian traffic and that the public roads are adequate to accommodate the proposed use.

Section 59-G-2.16. Drive-in restaurants.

A drive-in restaurant may be allowed, upon a finding, in addition to findings required in division 59-G-1, that:

- (a) The use will not constitute a nuisance because of noise, illumination, fumes, odors or physical activity in the location proposed.

The Board finds that the Special Exception modification will not constitute a nuisance because of noise, illumination, fumes, odors or physical activity in the location proposed.

- (b) The use at the proposed location will not create a traffic hazard or traffic nuisance because of its location in relation to similar uses, necessity of turning movements in relation to its access to public roads and intersections, or its location in relation to other buildings or proposed buildings on or near the site and the traffic patterns from such buildings or cause frequent turning movements across sidewalks and pedestrian ways, thereby disrupting pedestrian circulation within a concentration of retail activity.

The Board finds that the proposed modification will create an improved circulation pattern within the site and access to and from the site will be improved from East Randolph Road.

- (c) The use of the proposed location will not pre-empt frontage on any highway or public road in such manner so as to substantially reduce the visibility and accessibility of an interior commercial area zoned or proposed for commercial use which is oriented to the same highway or public road.

The Board finds that there is no interior or commercial area that would be preempted by the proposed redevelopment and further, the proposal will not reduce the visibility or accessibility to any future interior commercial zoned area. Furthermore, the removal of the play area will allow the full facade of the building to be seen from the street.

- (d) When such use abuts a residential zone or institutional premises

not recommended for reclassification to commercial or industrial zone on an adopted master plan and is not effectively screened by a natural terrain feature, the use shall be screened by a solid wall or a substantial, sightly, solid fence, not less than 5 feet in height, together with a three-foot wide planting strip on the outside of such wall or fence, planted in shrubs and evergreens 3 feet high, at the time of original planting and which shall be maintained in good condition. Location, maintenance, vehicle sight distance provisions, advertising and parking areas pertaining to screening shall be as provided for in the requirements contained in article 59-E.

The Board finds that the installation of an 8-foot high fence and landscaping along the northern property line that abuts residentially zoned land will provide adequate screening.

- (e) Product displays, parked vehicles and other obstructions which adversely affect visibility at intersections or at entrances and exits to and from, such use are prohibited.

The Board finds that there will be no displays, parked vehicles or other obstructions that adversely affect visibility at the intersections or entrances to the Property.

- (f) Lighting is not to reflect or cause glare into any residential zone.

The Board finds the proposed placement of the lighting, height of the light poles and directed shields will result in no reflection or glare into any adjoining residential zone.

- (g) When such use occupies a corner lot, the ingress or egress driveways shall be located at least 20 feet from the intersection of the front and side street lines of the lot, as defined in section 59-A-2.1, and such driveways shall not exceed 25 feet in width; provided, that in areas where no master plan of highways has been adopted, the street line shall be considered to be at least 60 feet from the centerline of any abutting street or highway.

The Board finds that the location of the existing facility is not a corner lot; therefore, the above criteria will not apply.

The Board will require the Applicant to receive a parking setback waiver from the Planning Board at the time of special exception site plan review, subject to the Planning Board's authority under Chapter 59-E of the Montgomery County Zoning Ordinance.

Accordingly, the Board grants the requested modification subject to the following conditions:

1. The Applicant shall be bound by all of its testimony and exhibits of record and the testimony of its witnesses, to the extent that such testimony and representations are identified in the Board's opinion granting the special exception modification.
2. All terms of the existing Special Exception remain in effect, except as modified herein.
3. The hours of operation for the facility will be limited to the following: 5:30 a.m. to midnight from Sunday to Thursday and 5:30 a.m. to 1:00 a.m. on Friday and Saturday.
4. The applicant must adhere to sign standards as set forth in Section 59-F-4.2 (b) of the Zoning Ordinance for a commercial area.
5. Compliance with the Department of Permitting Services requirements for stormwater management and sediment erosion control.
6. Approval of a Site Plan by the Montgomery County Planning Board, which shall include:
 - a. Additional landscaping from the New Hampshire Avenue access point and screening of all trash containers from public view.
 - b. Lighting levels for the parking area shall follow the Illuminating Engineering Society of North America, Lighting for Parking Facilities, RP-20-98, which recommends that light levels in parking lots where enhanced security is desired, not exceed a 15:1 Maximum to Minimum Uniformity Ratio. Light poles for the parking area shall not exceed 20 feet and no lights shall be placed in the northeastern corner of the parking area, which is adjacent to the residentially zoned property.
 - c. Marked pedestrian walkways between the sidewalks of the adjacent roadways into the restaurant to minimize conflict with vehicles.
 - d. Road improvements, including landscaping along East Randolph Road, as determined by the Department of Public Works and Transportation.

- e. The request for a setback waiver for the parking area along the northern property line from the residential zoned property will be determined at Site Plan.
- 7. Light poles shall be no higher than 20 feet and shall have directed shields along the northern property line so that no excess illumination is directed onto residential property, as shown on Exhibit 21 (the photometric plan provided by the Applicant).
- 8. The Applicant shall submit a revised special exception site plan to the Board providing a 30-foot turning radius along the easternmost drive aisle and increasing the landscaping in the northeastern corner of the property. All landscaping is to be continually maintained by the Applicant. "No Parking" signs are to be placed to the west of the increased landscaping.
- 9. Applicant is bound by the revised special exception site plan submitted as Exhibits 20 and 23.
- 10. Five five-foot tall bollards shall be placed every five feet along the thirty foot turning radius.
- 11. This approval shall be subject to the applicant obtaining a parking setback waiver from the Montgomery County Planning Board at the time of Site Plan approval.
- 12. The Applicant shall observe the noise regulations contained in Montgomery County Code Chapter 31B at all times, including during construction. Construction activities shall be further limited to 7:00 a.m. to 7:00 p.m.
- 13. Applicant shall obtain all necessary for construction of an eight-foot high fence along the northern property line, as shown on the special exception site plan.
- 14. Deliveries not taking place between 7:00 a.m. and 9:00 p.m. shall be limited to one delivery per week after 9:00 p.m., which must be concluded no later than midnight.

The Board adopted the following resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the Opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

On a motion by Louise Mayer seconded by Donald H. Spence, Jr., Chairman, with Donna Barron, Angelo Caputo and Allison Fultz, in agreement, the Board adopted the foregoing Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of

Appeals

I do hereby certify that the foregoing
Opinion was officially entered into the
Opinion Book of the County Board of
Appeals this 14th day of December, 2001

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four-month period within which the special exception site plan granted by the Board must be exercised.

See Section 59-A-3.22 of the Montgomery County Zoning Ordinance regarding Use and Occupancy Permits for a special exception site plan.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered into the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

